

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

JERROLD RHODES and RACING )  
GROUP IKON INTERNATIONAL, INC., )  
                                )  
Plaintiffs,                   )  
                                )  
vs.                             )              Case No. 4:06CV1703 HEA  
                                )  
CORNELL HAYNES, JR., a.k.a. NELLY, )  
et al,                         )  
                                )  
Defendants.                   )

**OPINION, MEMORANDUM AND ORDER**

This matter is before the Court on Defendants Cornell Haynes, Jr. And Fillmore Street Brewery, LLC's Motion to Dismiss for Failure to Prosecute, [Doc. No. 29]. Although Plaintiffs have not responded to the Motion, the Court is at a loss as to why Defendants are, at this stage of the litigation, claiming Plaintiffs have failed to prosecute. Prior to the Court's Order of February 20, 2007, nothing was required of Plaintiff. A motion to dismiss was pending, and therefore the Court could not set a scheduling conference. Scheduling conferences are set as quickly as possible following defendants' answers. In this case, because an answer has not been filed, no scheduling conference can be set.

Defendants have not yet filed an answer. Although Defendants complain that

Plaintiffs have not filed an Amended Complaint, the decision to do so was within Plaintiffs' purview. It may be that Plaintiffs have abandoned the previous claim and intend to proceed with the remaining claims.

Because of the lapse of time from February 20, 2007 to the present without an amendment, the Court presumes that Plaintiffs have chosen to proceed with the Complaint as it is now before the Court. Should this be an incorrect assumption, Plaintiffs should be prepared to show good cause why the Complaint has not been amended within a reasonable time.

It also appears to the Court that Defendants are now in a position to file their answers in accordance with the Federal Rules of Civil Procedure so that this matter may proceed in a timely fashion.

Accordingly,

**IT IS HEREBY ORDERED** that Defendants' Motion to Dismiss, [Doc. No. 29], is denied.

Dated this 27th day of March, 2007.



---

HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE